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No. 1210

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

BARNETT SARFATY, PHILAMENA CONNOR, EMMA BRISCOE and KATHLEEN HART,

Petitioners,

VS.

JOSEPH NOWAK, Mayor of the City of Calumet City, Illinois, LAWRENCE J. GIOVINGO, FRANK PREKAWAS, JR., JOSEPH SANYE, MRS. SARAH MASE, JEROME A. SCHMITT, HERBERT J. BRECLAW and JOHN JARANOWSKI, JR., Members of the Council of the City of Calumet City, Illinois, and CASIMIR E. LINKIEWICZ, Chief of Police of the City of Calumet City, Illinois,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioners, hereby pray that a Writ of Certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit in the above case.

JUDGMENT AND OPINION OF THE COURT BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit in the above entitled cause, dated October 5, 1966, affirmed the judgment which was entered by the United States District Court for the Northern District of Illinois, Eastern Division. The opinion of the Court of Appeals was reported at 369 F.2d 256. The judgment order of the Court of Appeals was entered on October 5, 1966 and is reprinted as Appendix A to this petition. A Petition for Rehearing was timely filed but was denied by an order dated January 4, 1967, which is reprinted as Appendix B of this petition.

STATEMENT OF JURISDICTION

The order of the United States Court of Appeals for the Seventh Circuit entered on October 5, 1966, affirmed the judgment entered by the United States District Court for the Northern District of Illinois, Eastern Division. On October 11, 1966, and November 7, 1966, the Court of Appeals entered orders extending the time for the filing of Petitioners' Petition for Rehearing to and including November 18, 1966. The Petition for Rehearing was filed on November 18, 1966. On January 4, 1967, The Court of Appeals denied Petitioners' Petition for Rehearing. This Petition for a Writ of Certiorari is filed within ninety days of the denial of the Petition for Rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Under the provisions of Rule 15 (a) of the Federal Rules of Civil Procedure, does not the Plaintiff have an absolute right to amend his pleading prior to the filing of a responsive pleading?

2. Even though a complaint may seek to enjoin the enforcement of a municipal ordinance, is it error to apply the doctrine of Abstention where the Plaintiff has no adequate remedy under state laws?

RULES INVOLVED

"Rule 15. Amended and Supplemental Pleadings

(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so required."

STATEMENT OF THE CASE

This action was instituted by the filing of a complaint seeking injunctive relief against the Mayor, City Council and Chief of Police of the City of Calumet City, Illinois, enjoining them from enforcing the provisions of a certain city ordinance. The complaint (App. 5-13) alleged that the Petitioner Sarfaty was the holder of a liquor license for the Shay Club in Calumet City and that the remaining petitioners were barmaids employed by Sarfaty in the Shay Club. The complaint further alleged that the City Council of Calumet City adopted a certain ordinance which provided that no female employed in a licensed liquor establishment could accept from any male patron any alcoholic or non-alcoholic beverages, nor could any such female

fraternize, associate, or mingle with any male patron and further that it would be unlawful for any employer to employ any female person that engaged in such activities.

The complaint further alleged, that it was part of the regular course of business of barmaids to, on occasion, accept alcoholic and non-alcoholic beverages from male patrons and also to fraternize, associate or mingle with male patrons.

The complaint further alleged that if the Petitioner Sarfaty were required to comply with the provisions of the ordinance, he would also be required to violate Title 42 U.S.C. 2000e-(2)a in that he would be required to hire persons other than persons of the female sex to carry on activities normally carried on by the bartenders and barmaids in the regular course of their business as bartenders and barmaids.

The barmaid petitioners alleged that the ordinance deprived them of their property without due process of law and denied them the equal protection of the laws.

The District Court, with no responsive pleading having been filed although agreeing that it had jurisdiction dismissed the complaint in a stated exercise of his discretion to decline jurisdiction over a case challenging the constitutionality of a penal provision prior to its enforcement. The District Court also denied to petitioners leave to amend the complaint.

REASONS FOR GRANTING THE WRIT

I.

THERE IS A CONFLICT IN DECISIONS AMONG THE VARIOUS CIRCUIT COURTS OF APPEALS AND A CONFLICT OF DECISIONS WITHIN THE SEVENTH CIRCUIT RELATING TO THE RIGHT OF A PLAINTIFF TO AMEND A COMPLAINT PRIOR TO THE FILING OF A RESPONSIVE PLEADING.

This case presents an issue vital to the administration and interpretation of Rule 15(a) of the Federal Rules of Civil Procedure. After the District Court dismissed the complaint *sua sponte,* the petitioners moved for leave to file an amended complaint, this motion was denied (App. 34-35).

Rule 15(a) of the Federal Rules of Civil Procedure provides in part as follows:

> "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served. * * *."

Prior to this decision, the Seventh Circuit had uniformly interpreted Rule 15 (a) to confer an absolute right upon the plaintiff to amend prior to the filing of a responsive pleading.

In *Peckham* v. *Scanlon,* 241 F. 2d 761 (7th Cir., 1957) the Seventh Circuit stated at page 764:

> "As already noted, no responsive pleading had been filed at the time of the court's order. [of dismissal] Such being the situation, plaintiff contends that he was entitled as a matter of right to amend his complaint and that the court's dismissal under the circumstances was erroneous and requires a reversal.

Defendants make no direct response to this contention but rely upon a principle stated in many cases of which *Helvering* v. *Gowran*, 302 U.S. 238, 58 S.Ct. 154, 82 L. Ed. 224, is typical. The rule as there announced is as follows, 302 U.S. at page 245, 58 S. Ct. at page 158:

> 'In the review of judicial proceedings the rule is settled that if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason.'

The question as to whether this general principle can be utilized to remedy a failure to comply with Rule 15 (a) has not been decided, so far as we are aware. This court in *Peterson Steels, Inc.* v. *Seidmon*, 7 Cir., 188 F. 2d 193, 194, recognized the rule as conferring an absolute right to amend. The Sixth Circuit in *Rogers* v. *Girard Trust Co.*, 159 F. 2d 239, 241, appears to have appraised the rule in the same manner. In fact, the positive language of the rule appears to leave no room for interpretation or construction other than that it confers an absolute right, of which the pleader cannot be deprived. The general rule relied upon by defendants, if applied to the instant situation, would amount to an emasculation of Rule 15 (a). It would constitute a dangerous precedent and one which likely would require repudiation in the future. In this connection we are not unmindful of defendant's contention that not only does the complaint fail to state cause of action but that there is no possibility that a cause can be stated, taking into consideration the nature of the charges, directed as they are in the main against those immune from prosecution. The argument is plausible but its deficiency resides in the fact that it does not meet the situation. The inescapable point is that plaintiff, the same as any other pleader, in the absence of a responsive pleading is entitled as a right to make the attempt."

In *Fuhrer* v. *Fuhrer,* 292 F. 2d 140 (7th Cir. 1961) the Seventh Circuit again stated its position:

> "The plaintiff contends that under Rule 15 (a) of the Federal Rules of Civil Procedure, he has the absolute right to file an amended complaint. Rule 15 (a) provides that, 'A party may amend his pleading once as a matter of course at any time before a responsive pleading is served * * *'. A motion to dismiss is not a responsive pleading within the meaning of this rule. *Peterson Steels, Inc.* v. *Seidmon,* 7th Cir., 188 F. 2d 193.
>
> A literal reading of Rule 15 (a) might suggest that a plaintiff would be entitled as of right to one amendment to his complaint without any limit of time, despite the filing of a motion to dismiss. This has led some courts and commentators to interpret Rule 15 (a) as subject to the qualification that the plaintiff may not amend after the court has dismissed the complaint except upon leave of the court. *United States* v. *Newbury Mfg. Co.,* 1 Cir., 123 F. 2d 453; *Kelly* v. *Delaware River Joint Commissions,* 3 Cir., 187 F. 2d 93; 3 Moore Federal Practice §15.07, page 826 (2d ed. 1948).
>
> This Court has taken a more liberal view of Rule 15 (a). In the *Peterson Steels* case, supra, the action was for breach of contract. The District Court sustained the motion to dismiss. Plaintiff thereafter filed a motion for leave to file an amended complaint. The District Court denied the motion saying the proposed complaint was essentially the same as the one originally filed. This Court said, at page 194 of 188 F. 2d, 'As defendants had not served a responsive pleading, plaintiff was entitled to file his amended complaint as a matter of course and was not required to ask leave of Court; it was error, however, to deny such leave when the request was made.'
>
> In *Peckham* v. *Scanlon,* 241 F. 2d 761, 764, this Court approved a liberal interpretation of Rule 15 (a) and

at page 74 said, 'This court in *Peterson Steels, Inc.* v. *Seidmon*, 7 Cir., 188 F. 2d 193, 194, recognized the rule as conferring an absolute right to amend.' ''
Fuhrer v. *Fuhrer*, 292 F. 2d 140, 142 (7th Cir., 1961).

This position is also followed by the Ninth and Sixth Circuits.

See: *Breier* v. *Northern California Bowling Proprietors' Association*, 316 F. 2d 787 (9th Cir. 1963); *Rogers* v. *Girard Trust*, 159 F. 2d 239.

Wherefore, since it is apparent that the decision of the Seventh Circuit in this case is in conflict with its prior decisions relating to the interpretation of Rule 15 (a) and is in conflict with the decisions of the Sixth and Ninth Circuits, this court should issue a Writ of Certiorari to resolve the question of the right to amend under Rule 15 (a) in the interest of a uniform interpretation of that Rule by the courts of the United States.

II.

SHOULD THE DOCTRINE OF ABSTENTION BE APPLIED TO A COMPLAINT WHICH SEEKS TO ENJOIN THE ENFORCEMENT OF A MUNICIPAL ORDINANCE WHERE COMPLIANCE WITH THAT ORDINANCE WOULD CAUSE LOSS OF EMPLOYMENT SOLELY BECAUSE OF SEX AND THEREFORE CONSTITUTE A VIOLATION OF THE CIVIL RIGHTS ACT OF 1964.

The complaint filed herein by the petitioners was more than a mere attempt to enjoin the enforcement of a municipal ordinance for as the complaint set forth by compliance with the provisions of that ordinance, the barmaid peti-

tioners would be denied employment solely because of their sex and the petitioner Sarfaty would be required to violate 42 U.S.C. 2000 (e) (a).

In considering the complaint filed herein, the Trial Court expressly found that it possessed the requisite jurisdiction. The trial court stated:

> "I agree with the plaintiffs that the suit is one over which the court has jurisdiction of the subject matter under 42 U.S.C. Section 1983 with original jurisdiction itself being conferred by 28 U.S.C. Section 1343" (App. 30).

The sole reason advanced by the trial court for its order of dismissal was:

> ". . . [O]n the basis of my discretion to decline jurisdiction over a case challenging the constitutionality of a penal provision prior to its enforcement, there will be an order dismissing the complaint sua sponte, pursuant to my discretion not to exercise jurisdiction over a case seeking injunction of the enforcement of a local penal provision." (App. 32)

We respectfully submit that such action exhibited too narrow a concept of the complaint and of the Civil Rights Act. The cases relied upon by the trial court and the Court of Appeals present a much different factual situation than the case at bar. In *City of Manchester* v. *Lieby,* 117 F. 2d 661 (1st Cir. 1941), cert. den. 313 U.S. 562, the Court reversed the grant of an injunction by the District Court solely on the ground that the ordinance involved, relating to the distribution of newspapers etc., was not invalid on its face.

Egan v. *City of Aurora,* 275 F. 2d 377 (7th Cir. 1960) was a suit for damages. The controversy arose between two different factions of local officials relating to the right

of one official to freedom of speech and assembly and the alleged abridgement of that right by the other group. The Seventh Circuit held that "[t]he Federal Civil Rights Act was not enacted to discipline local law-enforcement officials" 275 F. 2d 378, 380. After remand by this court, 365 U.S. 514, the Seventh Circuit again upheld the dismissal of the complaint but on entirely different grounds. The Seventh Circuit held that Section 1985 of Title 42 U.S.C., creates a cause of action for conspiracy to deny equal protection of the laws, not for conspiracy to deny due process. 291 F. 2d 706, 708. However, the Seventh Circuit did find that the allegations of the complaint could be construed to state a cause of action against certain of the defendants and therefore remanded the cause for trial on the merits. The Court abandoned its prior position that such actions must always be left to state court determination.

In the case at bar, the petitioners alleged that the enforcement of the ordinance complained of would deny to them due process of law and that the ordinance, since it was directed solely to females, denied to them the equal protection of the laws, and is therefore invalid on its face.

The petitioner Sarfaty in addition would be required to hire persons other than persons of the female sex and therefore would under the terms of 42 U.S.C. 2000 (e) (a) be engaged in an unfair employment practice.

We, therefore, submit that the issues presented by the complaint involve more than an injunction of a state criminal proceeding but clearly show an irreparable injury to all petitioners, *i.e.* loss of employment by the barmaid petitioners and the loss of the service of the barmaids to the owner and to prevent the owner from committing an unfair employment practice by complying with an invalid city ordinance.

This court recently faced a similar problem in *Dombrowski* v. *Pfister,* 380 U.S. 479, considering a complaint seeking an injunction against local prosecution. The Court after examining the cases since *Ex Parte Young,* 209 U.S. 123 stated:

> "... [T]he allegations in this complaint depict a situation in which defense of the State's criminal prosecution will not assure adequate vindication of constitutional rights. They suggest that a substantial loss or impairment of freedoms of expression will occur if appellants must await the state court's disposition and ultimate review in this Court of any adverse determination. These allegations if true, clearly show irreparable injury."

See also: *Corsican Productions* v. *Pitchess,* 338 F. 2d 441 (9th Cir., 1964).

Here the petitioners will suffer loss of employment solely because of their sex. This loss of employment is clearly violative of both the Due Process Clause of the Fifth Amendment and the Due Process and Equal Protection Clause of the Fourteenth Amendment. *Colorado Anti-Discrimination Comm.* v. *Continental Air Lines,* 372 U.S. 714, 721.

Wherefore, we respectfully submit that in view of the question of the application of the Civil Rights Act of 1964 to this case and because of the apparent conflict between the decision of the Seventh Circuit and the decisions of this Court in *Dombrowski* v. *Pfister,* 380 U.S. 479, and *Colorado Anti-Discrimination Comm.* v. *Continental Air Lines,* 372 U.S. 714, 721, that this court should issue a Writ of Certiorari to review the question of the sufficiency of a complaint filed under the Civil Rights Act so that

the interpretation of that Act and the Civil Rights Act of 1964 will not be left to the state courts in the first instance.

CONCLUSION.

Wherefore, for the above and foregoing reasons, we respectfully request that this Court issue its Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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In the

United States Court of Appeals

For the Seventh Circuit

No. 15435 SEPTEMBER TERM AND SESSION 1966

BARNETT SARFATY, PHILAMENA CONNOR, EMMA BRISCOE and KATHLEEN HART,

Plaintiffs-Appellants,

v.

JOSEPH NOWAK, Mayor of the City of Calumet City, Illinois, LAWRENCE J. GIOVINGO, FRANK PREKAWAS, JR., JOSEPH SANYE, MRS. SARAH MASE, JEROME A. SCHMITT, HERBERT J. BRECLAW and JOHN JARANOWSKI, JR., Members of the Council of the City of Calumet City, Illinois, and CASIMIR E. LINKIEWICZ, Chief of Police of the City of Calumet City, Illinois.

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

OCTOBER 5, 1966

Before DUFFY, *Senior Circuit Judge, and* SWYGERT and FAIRCHILD, *Circuit Judges.*

DUFFY, *Senior Circuit Judge.* This is a suit seeking injunctive relief, asking that enforcement of a city ordinance be enjoined. The defendants are the Mayor and Chief of

Police of the City of Calumet City, Illinois, and the members of the City Council of that city. This appeal is from an order of the District Court denying a temporary restraining order pending a hearing for an injunction, and denying leave to file an amended complaint.

The complaint states that plaintiff Sarfaty is the holder of a liquor license for the Shay Club in Calumet City, Illinois, and the remaining plaintiffs are barmaids employed by Sarfaty in the operation of the Shay Club.

Among other things, the ordinance here in question provides that no female employed in a licensed liquor establishment can accept from any male patron any alcoholic or non-alcoholic beverage, nor can any such female fraternize, associate, or mingle with any male patron in such licensed establishments. The ordinance also prohibits any barmaid from soliciting the purchase of a drink from any male patron or from serving any drink that was thus solicited.

The trial court dismissed the complaint, *sua sponte* and would not permit the filing of an amended complaint on the ground that since the Court had dismissed because of having declined jurisdiction, any amendment of the complaint would be a useless procedure.

The complaint alleged that it was part of the regular course of business of barmaids to accept alcoholic and non-alcoholic beverages from male patrons, and to fraternize, associate and mingle with such patrons in such establishments.

The complaint further alleged that if plaintiff Sarfaty were required to comply with the provisions of the ordinance, he would be thus required to violate Title 42 U.S.C. 2000 e (2) a, in that it would be necessary for him to hire persons other than of the female sex to carry on activities

normally carried on by the bartenders and barmaids in the regular course of their business as bartenders and barmaids. Sarfaty claims the ordinance would thus force him to engage in an unfair labor practice.

The barmaid plaintiffs allege the ordinance deprives them of their property without due process of law, and also denies to them the equal protection of the law. They claim that they will suffer loss of employment solely because of their sex.

The district judge announced that he was exercising his discretion to decline jurisdiction over a case which challenged the constitutionality of a penal provision prior to its enforcement.

Plaintiffs say that this suit was brought under the Civil Rights Act, and was not only an attempt to enjoin state prosecution, but also was an attempt to enjoin the enforcement of an ordinance, the enforcement of which would cause irreparable injury to the plaintiffs.

It should be noted that the concluding paragraph of Section II of the Ordinance here under question provides "... nor shall any of the aforesaid prohibited activities be deemed to prevent any of the aforesaid females from accepting and serving the order of a male patron or customer for any alcoholic or non-alcoholic beverage in the regular course of her employment or work."

We may not indulge in any forecasts or presumptions that the enforcement of the ordinance will be abusive. As was well-stated by the Court in *City of Manchester* v. *Leiby*, (1 Cir. 1941), 117 F.2d 661, cert. den. 313 U.S. 562 (1941), at page 665—"... the notable and altogether proper reluctance of federal courts to issue injunctions against state

and city officials, restraining their enforcement of criminal laws and ordinances would lead us to adopt the most innocent interpretation until the state courts have ruled otherwise, or at least until the local officials have proceeded to act on an interpretation which brings the law or ordinance in conflict with constitutional guarantees."

Restraints are often imposed with reference to the liquor business.

The Illinois Supreme Court, in *Great Atlantic & Pacific Tea Co.* v. *Mayor & Commissioners of Danville,* 367 Ill. 310, 11 N.E. 2d 388, at 392 (1937), stated:

> "The right to engage in the liquor traffic is not an inalienable right guarded by the organic law. It is not a right of citizenship nor one of the privileges and immunities of citizens of the United States. It involves no constitutional right which is violated by the mere curtailment or termination of its exercise."

The above statement has been quoted with approval by the Illinois Supreme Court in many subsequent cases, the most recent of which is *Oak Park National Bank* v. *Village of Broadview,* 27 Ill. 2d 151; 188 N.E. 2d 679 (1963).

The regulation by ordinance of activities of B-girls has been challenged in various courts. *People* v. *King,* 115 Cal. App. 2d Supp. 875, 252 Pac. 2d 78; *City of Miami* v. *Jiminez,* (Fla.) 130 So. 2d 109. In *Milwaukee* v. *Piscuine,* 18 Wis. 2d 599, 119 N.W. 2d 442, the Wisconsin Supreme Court held that the ordinance there in question did not violate the Fourteenth Amendment. In that opinion, the Court observed (18 Wis. 2d, at page 612) "Ever since Eve, mankind has recognized that one thing may lead to another. . . ."

This Court, in *Egan* v. *City of Aurora,* 275 F.2d 377, affirmed in part and vacated and remanded in part on other grounds, 365 U.S. 514, quoted at page 380—"Federal juris-

diction is to be exerted only in exceptional cases involving such an emergency or great urgency as necessitate action to prevent irreparable injury. The jurisdiction to interfere with the proceedings of state governmental bodies charged with prosecution and punishment of offenders is an exceedingly delicate one to be exercised with the greatest of care. . . ."

Appellees urge that this is a "classic case for abstention." Appellants recognize the existence of the doctrine but assert it does not apply where irreparable damage will occur to protected constitutional rights. They say that this is such a case.

Both sides cite *Dombrowski* v. *Pfister*, 380 U.S. 479 (1965) which is the Supreme Court's latest statement on the application of abstention in cases which challenge state criminal laws.

In *Dombrowski*, at pages 489-90, the Court held abstention was not appropriate where "statutes are justifiably attacked on their face as abridging free expression, or as applied for the purpose of discouraging protected activities."

It is important to note that in *Dombrowski*, the Court reaffirmed the continued validity and importance of the doctrine of abstention. The Court said at pages 484-485:

> "Since that decision [Ex parte Young], however, considerations of federalism have tempered the exercise of equitable power,[2] for the Court has recognized that federal interference with a State's good-faith administration of its criminal laws is peculiarly inconsistent with our federal framework. It is generally to be assumed that state courts and prosecutors will observe constitutional limitations as expounded by this

> Court, and that the mere possibility of erroneous initial application of constitutional standards will usually not amount to the irreparable injury necessary to justify a disruption of orderly state proceedings." [Footnote omitted]

In *Dombrowski,* the Court repeatedly referred to infringement of First Amendment rights of expression and the specific events alleged by the plaintiffs to show official interference with protected activity. In the present case, no First Amendment rights are involved, no similar history of official harassment is alleged, and the local ordinance, which appears on its face to be rather carefully and narrowly drawn, deals with an area, the liquor business, traditionally subject to substantial state regulation.

This case appears, on its facts, to be much closer to the earlier case of *Douglas* v. *City of Jeannette,* 319 U.S. 157 (1943). In *Douglas,* the Court held that a federal court should refrain from interfering with the enforcement of a local ordinance regulating solicitations even though the ordinance was alleged (and in another case found) to violate the First Amendment. In *Dombrowski,* the Court quoted with approval the opinion in *Douglas.*

We hold that the District Court, in its sound judicial discretion, properly applied the doctrine of abstention, and was entirely justified in declining jurisdiction.

Defendants insist that the District Court committed error in refusing to permit them to amend the complaint. They cite Rule 15 (a), Federal Rules of Civil Procedure, which provides, in part: "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served. . . ." Plaintiffs cite *Peckham* v. *Scan-*

lon, 7 Cir., 241 F.2d 761; *Peterson Steels, Inc.* v. *Sideman,* 7 Cir., 188 F.2d 193, and *Fuhrer* v. *Fuhrer,* 7 Cir., 292 F.2d 140.

The language used by this Court in the *Peterson Steels* and *Peckham* cases might be subject to interpretation that the right to amend the complaint prior to the filing of a responsive pleading is absolute. However, in *Fuhrer* v. *Fuhrer,* decided in 1961, we said at page 143: "Leave to amend should be freely granted unless it appears to a certainty that plaintiff would not be entitled to any relief under any state of facts which could be proved in support of his claim."

Plaintiffs have not submitted any proposed amendment to the complaint. They have not suggested any allegations or language that would present any issue other than that passed upon by the Court. Rule 15(a) does not require a court to do a futile thing. No amendment, no matter how phrased, could be presented that would avoid the doctrine of abstention heretofore discussed and applied.

The District Court did not err in dismissing the complaint *sua sponte* or in denying plaintiffs' motion to amend their complaint.

The judgment of the District Court is

AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX A

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60610

Wednesday, October 5, 1966

Before

Hon. F. RYAN DUFFY, Senior Circuit Judge
Hon. LUTHER M. SWYGERT, Circuit Judge
Hon. THOMAS E. FAIRCHILD, Circuit Judge

BARNETT SARFATY, PHILAMENA CONNOR, EMMA BRISCOE and KATHLEEN HART,
Plaintiffs-Appellants.
No. 15435 vs.
JOSEPH NOWAK, Mayor of the City of Calumet City, Illinois, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this day.

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Wednesday, January 4, 1967

Before

Hon. JOHN S. HASTINGS, Chief Judge
Hon. F. RYAN DUFFY, Senior Circuit Judge
Hon. ELMER J. SCHNACKENBERG, Circuit Judge
Hon. WIN G. KNOCH, Circuit Judge
Hon. LATHAM CASTLE, Circuit Judge
Hon. ROGER J. KILEY, Circuit Judge
Hon. LUTHER M. SWYGERT, Circuit Judge
Hon. THOMAS E. FAIRCHILD, Circuit Judge
Hon. WALTER J. CUMMINGS, JR., Circuit Judge

BARNEY SARFATY, *et al.*,
Plaintiffs-Appellants,
No. 15435 vs.
JOSEPH NOWAK, Mayor of the City of Calumet City, Illinois, *et al.*, *etc.*,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

IT IS ORDERED by the Court that the petition for a rehearing *en banc* of this cause be, and the same is hereby DENIED.